NATIONAL UNION OF PLANTATION WORKERS

v.

REVERTEX (M) SDN BHD

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
ARIFIN ZAKARIA JCA
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: W-02-622-1999]
27 SEPTEMBER 2004

LABOUR LAW: *Trade dispute - Reference - Company refusing to recognise workers as union representatives - Application by Union under s.33(1) Industrial Relations Act 1967 for interpretation of collective agreement - Whether s. 33 application a guise for bringing disputed questions of fact before Industrial Court - Whether Industrial Court had jurisdiction to entertain application - Whether company's refusal to accord recognition a trade dispute that should have been referred to Industrial Court under s. 26(1)*

This was an appeal by the appellant/trade union ('the Union') against the decision of the High Court allowing an application by the respondent/company ('the Company') to set aside Industrial Court Award No. 601 of 1998 ('the said award'). By the said award, the Industrial Court had earlier directed the Company to recognise the election of some of its workers as representatives to the Union ('the local representatives'). The Company had refused to recognise the local representatives on account that they had recently participated in an illegal strike.

Before the justices of the Court of Appeal herein, the Company contended, as it did before the learned judge, that the Industrial Court had, in the context of the factual matrix obtaining, acted outside its statutory jurisdiction in making the said award directing the Company to recognise the local representatives. It was argued that the Industrial Court had no jurisdiction to entertain the Union's application under s. 33(1) of the Industrial Relations Act 1967 ('the Act') to have arts. 3 and 5 of the applicable collective agreement interpreted as no dispute had arisen in respect thereof.

Held (dismissing the Union's appeal)
Per Arifin Zakaria JCA delivering the judgment of the court:

[1] The Industrial Court should decline to exercise its jurisdiction under s. 33(1) of the Act if it were asked to determine **disputed** questions of fact. This is to ensure that trade disputes (which should be referred under s. 26(1) of the Act) are not short-circuited to the Industrial Court in the guise of interpretation questions under s. 33(1) of the Act. (p 302 d-g)

[2] In the present case, it was obvious that there were **no** disputes as between the parties with respect to arts. 3 and 5 of the collective agreement. The refusal of the Company to accord recognition to the local representatives had absolutely nothing to do with arts. 3 and 5 of the collective agreement or their interpretation. Indeed, the matter was a trade dispute the resolution of which should be by way of a reference to the Industrial Court under s. 26(1) of the Act. The Industrial Court had, therefore, committed an error of law in excess of jurisdiction when it proceeded to hear the Union's application to 'interpret' arts. 3 and 5 of the collective agreement under s. 33(1) of the Act. (pp 307 h, 308 a-c & e-h)

[Decision of High Court quashing Industrial Court award upheld.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan oleh perayu/kesatuan sekerja ('Kesatuan') terhadap keputusan Mahkamah Tinggi yang membenarkan permohonan responden/syarikat ('Syarikat') untuk mengetepikan Award Mahkamah Perusahaan No. 601 Tahun 1998 ('award tersebut'). Melalui award tersebut, Mahkamah Perusahaan telah mengarahkan Syarikat untuk mengiktiraf pemilihan beberapa pekerjanya sebagai wakil-wakil Kesatuan ('wakil-wakil tempatan'). Syarikat enggan mengiktiraf wakil-wakil tempatan atas alasan bahawa mereka baru sahaja terlibat dalam satu mogok yang tidak sah.

Di hadapan yang arif hakim-hakim rayuan di sini, Syarikat mengatakan, sepertimana hujah mereka di hadapan yang arif hakim, bahawa Mahkamah Perusahaan, dalam konteks fakta-fakta yang wujud, telah bertindak di luar bidang kuasa apabila membuat award mengarahkan Syarikat mengiktiraf wakil-wakil tempatan. Dihujahkan juga bahawa Mahkamah Perusahaan tidak berbidang kuasa untuk melayan permohonan Kesatuan di bawah s. 33(1) Akta Perhubungan Perusahaan 1967 ('Akta') untuk mentafsir fasal-fasal 3 dan 5 perjanjian bersama yang terpakai itu disebabkan tidak ada pertikaian telah timbul berkaitan dengannya.

Diputuskan (menolak rayuan Kesatuan)
Oleh Arifin Zakaria HMR menyampaikan penghakiman mahkamah:

[1] Mahkamah Perusahaan seharusnya menolak untuk melaksanakan bidang kuasanya di bawah s. 33(1) Akta jika ia diminta untuk memutuskan persoalan-persoalan fakta yang dipertikai. Ini untuk mempastikan bahawa pertikaian-pertikaian perusahaan (yang perlu dirujuk di bawah s. 26(1) Akta) tidak dibawa ke Mahkamah Perusahaan secara pintas dengan berpura-pura membangkitkan persoalan-persoalan tafsiran di bawah s. 33(1) Akta.

[2] Dalam kes semasa, jelas bahawa tidak terdapat sebarang pertikaian di antara pihak-pihak mengenai fasal-fasal 3 dan 5 perjanjian bersama. Keengganan Syarikat untuk memberikan pengiktirafan kepada wakil-wakil tempatan tidak berkaitan langsung dengan fasal-fasal 3 dan 5 perjanjian bersama atau dengan pentafsirannya. Sebenarnya, persoalan di sini adalah persoalan pertikaian perusahaan yang harus diputuskan dengan cara rujukan kepada Mahkamah Perusahaan di bawah s. 26(1) Akta. Mahkamah Perusahaan, dengan itu, telah melakukan kekhilafan undang-undang yang melampaui bidang kuasanya apabila ia bertindak mendengar permohonan Kesatuan untuk 'mentafsir' fasal-fasal 3 dan 5 perjanjian bersama di bawah s. 33(1) Akta.

Keputusan Mahkamah Tinggi membatalkan award Mahkamah Perusahaan dikekalkan.]

Case(s) referred to:
Malayan Agricultural Producers Association v. National Union of Plantation Workers [1992] 3 CLJ 1336; [1992] 1 CLJ (Rep) 207 SC ***(foll)***
Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***

Legislation referred to:
Industrial Court Rules 1967, r. 14
Industrial Relations Act 1967, ss. 26(1), 33(1), 56

For the appellant - LG Seah; M/s Lobo & Assoc
For the respondent - A Ramadas (M Jothi); M/s Ramadas & Assoc

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R2-25-150-98]

Reported by Gan Peng Chiang

JUDGMENT

Arifin Zakaria JCA:

This is an appeal against the decision of the learned High Court Judge in allowing the respondent's application to set aside and quash the Award of the Industrial Court No. 601 1998 dated 17 November 1998 ("the Award"). On 29 September 2003 having heard the parties we dismissed the appeal and affirmed the decision of the learned judge. We now give our reasons.

The appellant is the National Union of Plantation Workers representing the employees of the respondent. The appellant and respondent had entered into a collective agreement governing wages and terms and conditions of employment binding on them for a period of three years effective from 1 November 1995 till 31 December 1998 ("the CA"). The CA was taken cognisance by the Industrial Court *vide* Cognisance No. 41 of 1996.

On 18 March 1998 the appellant made an application under s. 33(1) of the Industrial Relations Act 1967 ("the Act") for an interpretation of arts. 3 and 5 of the CA. The facts leading to this application are not in dispute and are briefly as follows. On 16 August 1996 the appellant wrote to the respondent requesting for the recognition of the election of the representatives of the Union, referred to as "The Factory Local Committee members" held during the biennial meeting of the Union on 5 August 1998 (in this judgement will be referred to as "the Local Union Committee"). The respondent refused to recognise the Local Union Committee on the ground that the employees elected to Local Union Committee had participated in the illegal strike which took place from 10 August to 15 August 1994.

It is common ground that the Director General of Trade Union ("DGTU") had already issued a warning to Union members including the elected Local Union Committee who had participated in the illegal strike. The respondent, however, had adopted the stand as indicated in their letters of 23 May, and 12 June 1995 that the Union ought to remove those members who had participated in the illegal strike from the register of the Union. On that premise the respondent refused to give recognition to the Local Union Committee. Upon those facts the appellant made an application under s. 33(1) of the Act for the interpretation of arts. 3 and 5 of the CA. The Industrial Court in the Award held that the respondent should recognise the Local Union Committee members. In so holding the court expressed the view that whether the application before it was made under s. 56 or s. 33 of the Act the court still has jurisdiction over the application.

The principal issue canvassed before the High Court and before us is whether based on the facts as narrated above the Industrial Court had acted within its jurisdiction in making the order directing the respondent to recognise the Local Union Committee.

The Industrial Court is a creature of statute and its jurisdiction is similarly conferred by statute. Naturally it has to act within the limit of its jurisdiction. Before the High Court the respondent contended that the Industrial Court has no jurisdiction under s. 33(1) of the Act to entertain the application by the appellant as no dispute had arisen in regard to the interpretation of arts. 3 and 5 of the CA. The respondent further contended the refusal by the respondent to recognise the Local Union Committee, if anything, had given rise to a trade dispute, in which event, the proper recourse would be to invoke s. 26(1) of the Act and not s. 33(1) of the Act.

7. Section 33(1) of the Act provides:

> 33(1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the Court for a decision on the question.

The Federal Court in *Malayan Agricultural Producers Association v. National Union of Plantation Workers* [1992] 3 CLJ 1336; [1992] 1 CLJ (Rep) 207 sets out the difference between a reference under s. 33(1) and a reference under s. 26 of the Act, which reads as follows:

> A reference by the Minister under s. 33(1) is different from say, a reference of a trade dispute under s. 26 where the Minister need only indentify the parties to the dispute and state a dispute exists between them with regard to the conclusion of a collective agreement, or the dismissal of certain employees, without going into details. In such cases, the Industrial court is granted very wide powers to determine the real dispute between the parties and may even include matters not specifically claimed by the parties: s. 30(7). A s. 33(1) reference, on the other hand has to be precise so that on its face, the Industrial Court will know exactly the question it has to answer. The facts which give rise to the question have to be stated but must not be disputed. In the process of answering the question, the Industrial Court will have the benefit of hearing the respective views of the parties bound by the award or collective agreement: s. 33(3). The Industrial Court should decline to exercise its jurisdiction under this section if it is made to determine disputed questions of fact, so as to ensure that trade disputes are not short-circuited to it in the guise of interpretation questions.

Rule 14 of the Industrial Court Rules 1967 sets out the procedure to be followed in a reference under s. 33(1). The said Rule reads as follows:

14. Interpretation of Award or Collective Agreement.

(1) An application made under s. 33(1) of the Act for a decision on any question arising as to the interpretation of any award or collective agreement taken cognizance of by the Court shall be made by delivering

to the Registrar at the premises of the Court during office hours or forwarding to him at such premises by AR Registered Post six copies of the application in Form M.

(2) The place, date and time for the hearing of the parties on the question shall be filed by the President and notified to the parties by the Registrar by endorsement on the application.

(3) The Registrar shall serve copies of such application endorsed as aforesaid on the parties bound by the award or collective agreement.

The relevant Form M filed in this case reads as follows:

Form M
(Rule 14)

In The Industrial Court
Section 33(1) of the Act.

APPLICATION FOR INTERPRETATION OF AWARD/ COLLECTIVE AGREEMENT

In the matter of *Award No. in Case No of 19

*collective Agreement Cognizance No. 41/96

Between

Revertex Sdn. Bhd.

and

National Union of Plantation Workers

Application is hereby made by National Union of Plantation Workers for an interpretation of the following provisions of the following provisions of the above-mentioned *Award/Collective Agreement: Cog NO. 41/96

*** Article 3 and 5

The Applicant submits that the provisions should be interpreted in the following manner

(Please see Annexure)

sgd.

Dated 18th March, 1998
Address of company
Revertex (Malaysia) Sdn. Bhd.
K.B. 508
86009 Kluang
Johor

(Signature of Applicant)
General Secretary (G. Sankaran)
Address: National Union of
Plantation Workers, No. 12,
Tingkat 2, Jalan Petaling Utama
B, Petaling Utama, 7th Mile Old
Klang Road, P.O. Box 73, 4800
Petaling Jaya, Selangor Darul Ehsan.

a * Delete words not applicable
** State appropriate paragraphs of Award/Collective Agreement.
# State shortly.

Take notice that the above-mentioned application will be considered by the Industrial Court at ... o'clock in the forenoon on the ... day of ... 19 ... at
b the premises of the Court at Jalan Mahkamah Persekutuan, Kuala Lumpur and that you shall then be afforded an opportunity to be heard.

Take further notice that should you be absent, the Court may hear and determine the application notwithstanding your absence.

If you intend to be heard by your representative, you are required to deliver
c to the Registrar before or at the date aforesaid a Warrant of Authority in Form B.

Dated this ... day of ... 19 ...

...
(Seal)
d Registrar

To ...
...
...

(Parties bound by the
e above-mentioned Award/
Collective Agreement).

The Annexure referred to in Form M above reads as follows:

In view of Articles 3 and 5 of the Collective Agreement, the Company
f Revertex (Malaysia) Sdn. Bhd. cannot take the stand or position it has taken in his letter dated 21 August, 1996 (copy enclosed.)

The respondent's letter of 21 August 1996 referred to in the Annexure reads as follows:

g 21 August 1996.

Branch secretary,
National Union of Plantation Workers
112B-C, Jalan Mersing, P.O. Box
86007 Kluang,
Johor.

h

Dear Sir,

Re: Local Union Committee:

– Md. Nor bin Karim (I/C NO. 5971959)
– Badesha bin Kassim (I/C NO. A0068386)
i – Hairudin bin Ahmad Tahir (I/C NO. 7030945)

– Sulaiman bin Mohamad (I/CNO. A1578640)
– Md.Anuar bin Md. Nordin (I/C NO. 6988998)
– Anis @ Fuad bin Sulaiman (I/C NO. A0574545)
– Rakal bin Jantan (I/C NO. 6160933)
– Mohamad bin Md. Yunus (I/C NO. 1240155)
– Rahmat bin Kasiban (I/C NO. 3450154)

We refer to your letter dated 16th August 1996 regarding the above matter.

We regret to inform you that according to our record, the abovementioned employees have participated in the illegal strike which took place from 10th August to 15th August 1994.

In view of the above, the question of the abovementioned employees purported being elected into the above committee does not arise.

The company is not in a position to recognise them.

Yours faithfully,

Sgd.
MOHD. FAKHRI HAMID
Manager, Admin/Personnel.

MFH/azm

c.c i. MAPA, Headquarters
ii MAPA IRA, Johor
iii Pengarah Kesatuan Sekerja Johor, JB

In short, the appellant refused to recognise the members of the Local Union Committee on the ground that they had participated in the illegal strike from 10 August to 15 August 1994.

For completeness we reproduced below arts. 3 and 5 of the CA:

Article 3 – MODIFICATION AND DURATION

(a) During the period of this Agreement, neither the company nor the Union shall seek to alter, modify, annul, add to or vary any of its provisions in any way whatsoever nor shall any demands or claims be made on new terms and conditions of employment save by operation of law or as provided herein.

(b) Any variation to the terms of this Agreement, shall be jointly deposited by both parties with the Industrial Court for its cognizance within one month from the date of the agreement of the said variation. After the Court has given cognizance, such variation shall be binding from such

data and for such period as may be specified in the variation Agreement provided that such period shall not commence earlier than the effective date of this agreement.

(c) Either party may service on the other three (3) months' notice in writing to negotiate a new agreement, but no such notice shall be given before 30 September, 1998. Negotiations shall commence not later than one (1) month from the date of submission of proposals for a new agreement. During the period prior to the conclusion of a new collective agreement or an Award to replace this Agreement, the provisions of this Agreement shall apply.

(d) This Agreement may be terminated by either party giving three (3) months' written notice but such notice shall not be served before 30th September, 1998. In the event that the Agreement is terminated under this clause, the provisions of this Agreement shall apply until they are superceded by a new collective agreement or an award of the Industrial Court.

Article 5 – GRIEVANCE REDRESSAL PROCEDURE

(a) Recognising the value and importance of discussion in clearing up misunderstanding and preserving harmonious relations, every reasonable effort shall be made by the Company/MAPA and the employee/NUPW to dispose off any grievance or complaints at the lowest possible level as quickly as possible.

(b) The procedure shall be as follows:

Step I

Within four (4) working days of a grievance arising the employee concerned shall raise the grievance with supervisory staff to whom the employee is responsible and shall be given the opportunity to be accompanied by not more than two members of the NUPW Local Committee.

Step II

If the matter is still not settled within a further five (5) working days, following representations made under Step I above, the appropriate NUPW Local Committee shall make formal representation to the Company in writing. On receipt of NUPW's letter, the company will, without delay, offer arrangement for a meeting between the executive staff to whom the employee is responsible and/or an accredited official of the Company and NUPW which will be attended by not more than two NUPW's representatives. Such a meeting shall be held within seven (7) working days of receipt of the NUPW Local Committee's letter.

Step III

If the matter remains unsettled, the grievance shall then be discussed between the Manager and/or his accredited official and NUPW representatives within a further period of seven (7) working days.

Step IV

If the matter still remains unsettled, it shall then be dealt with under the provisions of the Industrial Relations Act, 1967 or the Employment Act, 1955.

The Industrial Court in its Award held that the respondent should recognise the Local Union Committee members who were elected and endorsed by the Union.

The reasons underlying the decision of the Industrial Court are as follows:

> The Director-General of Trade Union had made a decision. He chose to merely warn those members in the illegal strike and the matter was resolved. If his decision was not acceptable by the company it should take it up separately, instead of attempting to invoke section 26(3) of the Trade Unions Act 1959. We do not think the company is empowered to do so in this Court. Moreover, the impugned Article 3 and Article 5 have no provision for the company or the union to refuse to recognise or to deal with representatives of either party. From the facts it is clear the company declined to comply with the provisions of the impugned articles. Whether the application is under section 56(1) or section 33(1) of the Industrial Relations Act 1967 this Court has jurisdiction to the application.

Learned counsel for the respondent argued before us and before the High Court that for the Industrial Court to be clothed with the jurisdiction under s. 33(1) of the Act, there must first exist a question of interpretation of the CA. In the present case there was no dispute on the interpretation arts. 3 and 5 of the CA. Therefore, relying on the authority of *Malayan Agriculture Producers Association v. National Union of Plantation Workers (supra)* the dispute herein could not proceed by way of reference under s. 33(1) of the Act. The learned counsel for the appellant submitted that there was no dispute of facts in the present case and the refusal of the respondent to recognise the Local Union Committee amounts to a modification of art. 5 of the CA and, therefore, in the circumstances a reference under s. 33(1) of the Act is an appropriate procedure.

The learned High Court Judge agreed with the submission of learned counsel for the respondent for the following reasons:

> I was of the view that there were merits in the argument put forward by the Applicant's Counsel. The real crux of this matter was the refusal of the Applicant to give recognition to the local committee members who had just been elected on the ground of their involvement in the illegal strike. This being the issue, it had nothing to do with the interpretation of Articles 3 and 5 of the Collective Agreement. The question whether the Director-General of Trade Union had adequately dealt with the illegal strike issue should be a matter to be considered only at the hearing of the merits of the said trade dispute, that is after an application under s. 26(1) of the Industrial Relations Act, 1967 had been properly made. Hence, the invocation of s. 33(1) for the purpose of resolving this issue was, in my view, completely inappropriate. As such when the Industrial Court proceeded to hear this application despite the objection raised by the Applicant it had committed a very serious error of law and as such had exceeded its jurisdiction. It had no jurisdiction to hear such application at all. In addition to that it had addressed itself on a wrong issue.

Thus based on *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union* [1995] 2 CLJ 748 the learned judge allowed the respondent's application to quash the award of the Industrial Court.

Having considered the provisions of art. 3 we are of the view that they relate to the modification and duration of the CA. Article 3(a) provides that during the period of the CA neither party shall seek to alter, modify, annul, add to or vary any of its provisions. While art. 5 relates to the grievance redressed procedure. It spells out the role of NUPW Local Committee in resolving any grievance or complaint brought by any employee of the respondent. We do not think that the refusal of the respondent to give due recognition to the Local Union Committee amounts to a modification of art. 5 of the CA. Therefore, no question or issue of interpretation of arts. 3 and 5 of CA had arisen in this case for a reference to be made under s. 33(1) of the Act.

Thus, in the circumstances we agree with the learned judge that the Industrial Court misconstrued the provision of s. 33(1) of the Act in dismissing the objection raised by the respondent. This in our view is a serious error of law which goes to the issue of jurisdiction.

For the above reasons we hold that the learned judge had arrived at the right decision in allowing the respondent's application. The appeal herein is, therefore, dismissed with costs to the respondent. Deposit to be paid to the respondent towards account of taxed costs.